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In re Application of
De Meuter, et al.
Application No. 10/509,835
Filed: September 30, 2004
Attorney Docket No. 7393/84118

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed May 25, 2010, and in supplement on May 27, 2010. The petition will be treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181 and, in the alternative, a petition under 37 CFR 1.137(b) to revive the application.

The petition to withdraw the holding of abandonment is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application became abandoned on April 4, 2010, after no response was received to the Notice to File Corrected Application Papers mailed March 3, 2010, which set a period for reply of one -month from its mailing date. The Notice required corrected drawings to be filed. No response was received within the allowable period, and the application became abandoned on April 4, 2010. A Notice of Abandonment was mailed on May 19, 2010.

TREATMENT UNDER 37 CFR 1.181

In the instant petition, petitioner maintains that corrected drawings were not necessary as the drawings filed in 2004 were acceptable for publication.

Petitioner's argument is not persuasive. Applicant is not a liberty to ignore a requirement made in the Notice to File Corrected Application Papers regardless of whether applicant believes that the drawings correction is unnecessary. The Notice to File Corrected Application Papers made a requirement for corrected drawings and set a one month period for reply. Applicant was obligated to file a timely response to the Notice to File Corrected Application Papers or file a request to restart or reset the time period for responding to the Notice to File Corrected Application Papers because it was allegedly defective. See MPEP 710.06. Section 711.02 of the Manual of Patent Examining Procedure, citing 37 CFR 1.135(a) states, in pertinent part, that, "...an application becomes abandoned if applicant "fails to reply" to an office action within the fixed statutory period. This failure may result either from (A) failure to reply within the statutory period, or (B) insufficiency of reply, i.e., failure to file a "complete and proper reply, as the condition of the case may require" within the statutory period (37 CFR 1.135(b))." In this case, applicant failed to respond to the Notice to File Corrected Application Papers, and the application was properly held abandoned on April 4, 2010.

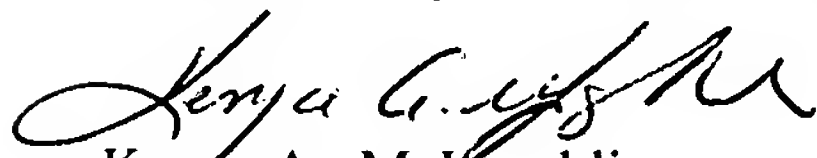
TREATMENT UNDER 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is granted.

It is noted that petitioner filed a copy of the Figure 1 that is at issue and that the copy as maintained in the Image File Wrapper is degraded. However, it is noted that there is a SCORE Placeholder Sheet for IFW Content in the Image File Wrapper indicating that "Drawings—Other than Black and White Line Drawings" are being stored in the SCORE database. The petition is being granted on the assumption that a legible and usable copy of Figure 1 is maintained in the SCORE database.

The application file is being directed to the Office of Data Management for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.



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Office of Petitions